



Broadcasting Decision CRTC 2007-69

Ottawa, 20 February 2007

Bayshore Broadcasting Corporation
Goderich, Ontario

Application 2006-0860-7
Public Hearing in the National Capital Region
18 December 2006

English-language FM radio station in Goderich

*In this decision, the Commission **approves** an application for a broadcasting licence to operate a new English-language, commercial FM radio programming undertaking in Goderich, Ontario.*

The application

1. The Commission received an application by Bayshore Broadcasting Corporation (Bayshore) for a broadcasting licence to operate an English-language, FM radio programming undertaking in Goderich, Ontario at 104.9 MHz (channel 285B1) with an average effective radiated power (ERP) of 5,330 watts.
2. Bayshore proposed to offer a classic adult contemporary music format featuring a variety of hits from the 1960s through to the present, and targeted to listeners in the 35-to-64-year demographic with a focus on those aged between 45 and 54 years. The programming would include thematic programs showcasing a variety of musical genres such as show tunes, jazz, blues, big band, oldies and light classical. The applicant planned to serve a population of 46,000 in its principal marketing area.
3. Bayshore stated that a minimum of 40% of category 2 (Popular music) musical selections aired over the broadcast week and a minimum of 35% of the category 2 musical selections aired daily between 6:00 a.m. and 6:00 p.m. would be Canadian. The proposed level of Canadian content for category 2 musical selections aired over the broadcast week exceeds the minimum level of 35% required by the *Radio Regulations, 1986*. The applicant also indicated that, in each broadcast week, a minimum of 15% of the station's musical selections would be drawn from category 3 (Special interest music). The applicant stated that it would adhere to its commitments by conditions of licence.
4. With respect to spoken word programming, the applicant proposed to offer approximately 10 hours 30 minutes of news in each broadcast week, including 18 live newscasts and five local news updates on weekdays and 13 live local newscasts and five news updates on Saturdays and Sundays. On average, 75% of the newscasts would be devoted to coverage of issues local to Goderich and surrounding areas. The proposed

station would also offer public affairs programs on Saturdays and Sundays providing coverage of special events as well as extended interviews and a reprise of the previous week's events with follow-up interviews. Additional spoken word programming would focus on local historical facts and cultural issues, editorial commentary, health-related topics, entertainment and local events.

5. With respect to the Canadian talent development (CTD), the applicant indicated that it would contribute a minimum of \$400 in each broadcast year to the Foundation to Assist Canadian Talent on Records (FACTOR). In addition, the applicant proposed to allocate \$2,500 per year to the Goderich Bluesfest for artist fees and assistance, \$2,100 to a discretionary fund to foster the development of local talent in Goderich and surrounding areas as well as an additional \$1,500 to FACTOR to be earmarked for the Huron County area. The applicant stated that, while its \$2,100 contribution to a discretionary fund would be generally used to fund local groups and individuals to cover eligible CTD expenses, any funds not expended by the end of the fiscal year would be given to FACTOR. In total, Bayshore's commitment to CTD over the course of seven consecutive broadcast years would be \$45,500 and would begin upon commencement of the station's operations.

Interventions

6. The Commission received many interventions in support of this application as well as interventions in opposition by Blackburn Radio Inc. (Blackburn) and 2079966 Ontario Limited (2079966).
7. Blackburn is the licensee of CKNX, CKNX-FM and CIBU-FM Wingham, Ontario. Blackburn indicated that it has filed an application with the Department of Industry (the Department) and the Commission for a broadcasting licence to operate a new FM station to serve Goderich.
8. In opposing Bayshore's application, Blackburn submitted that the primary marketing area of its Wingham stations consists of a number of small communities in Huron County including Goderich. Blackburn added that its Wingham stations provide a local service to Goderich and expressed concern that Bayshore's proposed station would have a negative financial impact on the intervener's stations. According to Blackburn, rather than considering the present application at this time, the Commission should issue a call for competing applications to serve Goderich. In the alternative, Blackburn suggested that the Commission call Bayshore to appear at a future public hearing.
9. 2079966 is the licensee of CIYN-FM Kincardine, which is authorized to operate transmitters in Goderich and Port Elgin. To date, 2079966 has not yet commenced operation of the transmitters in Goderich and Port Elgin.

10. While indicating that it supported the licensing of a local radio station to serve Goderich, 2079966 also expressed the view that the Commission should issue a call for competing applications. In the alternative, the intervener suggested that the Commission delay the implementation of any new service in the Goderich area in order to allow for the implementation of the intervener's authorized transmitter in that community.

Applicant's replies

11. In response to the opposing interveners, Bayshore noted that, in *The Issuance of Calls for Radio Applications*, Public Notice CRTC 1999-111, 8 July 1999 (Public Notice 1999-111), the Commission stated that proposals to provide the first commercial service in a market would generally not trigger a call for competing applications in the affected market because the public interest would not usually be served by unduly delaying the implementation of such a service. Bayshore submitted that, since approval of the present application would provide a first local service to the Goderich market, the Commission is under no obligation to issue a call for competing applications. Bayshore further argued that it would be contrary to the public interest to delay the implementation of an originating service due to the delayed implementation of a transmitter.
12. Bayshore submitted that Blackburn's Wingham stations provide a radio service that is regional in nature, serving communities within an estimated 15,000 square kilometre region covering five counties. Bayshore pointed out that its proposed station would provide a service that is specifically targeted to the Goderich region and would add to the diversity of news voices in the area. Nevertheless, Bayshore noted that most of the respondents to its market survey indicated that they are satisfied with the radio services they are currently receiving. According to Bayshore, its survey results indicate that, although its proposed station would introduce new competition in the market, it would not have an undue negative impact on Blackburn's stations.

Commission's analysis and determination

13. In its evaluation of this application, the Commission has carefully considered the views of the applicant and of the interveners.
14. The Commission notes that approval of this application would permit the establishment of a first local radio service in Goderich. In the Commission's view, Bayshore's proposed station would provide listeners in Goderich with a radio service designed to meet their particular needs and interests. The Commission considers that the proposed station would provide greater programming diversity through its musical format and extensive news and information packages as well as public affairs programming. The Commission further notes that the applicant's proposed talent development initiatives are focused on the Goderich community.
15. With respect to the interveners' arguments that the Commission should issue a call for competing applications, the Commission notes that, in *Revised policy concerning the issuance of calls for radio applications and a new process for applications to serve small markets*, Broadcasting Public Notice CRTC 2006-159, 15 December 2006, the

Commission reiterated its position set out in Public Notice 1999-111 that, if a commercial radio service has never existed in the market, the public interest would not usually be served by unduly delaying the implementation of such a service. Based on the foregoing, the Commission determines that, in the present circumstances, a call for competing applications to serve the Goderich area is not necessary.

16. With respect to Blackburn's proposal to serve Goderich, the Commission notes that Blackburn acknowledged that its application was filed on 20 October 2006, one day after the issuance of Broadcasting Notice of Public Hearing CRTC 2006-11, 19 October 2006, which announced the present public process to consider, among other applications, the present application by Bayshore. Accordingly, the Commission finds that, when filing its application, Blackburn had the benefit of prior knowledge of Bayshore's present application, thereby providing Blackburn with an undue competitive advantage.
17. In light of all of the above, the Commission **approves** the application by Bayshore Broadcasting Corporation for a broadcasting licence to operate a new English-language, commercial FM radio programming undertaking in Goderich at 104.9 MHz (channel 285 B1) with an average ERP of 5,330 watts.
18. The licence will expire 31 August 2013 and will be subject to the **conditions** set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, with the exception of condition number 5. The licence will also be subject to the **conditions** set out in the appendix to this decision.
19. In *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006 (Public Notice 2006-158), the Commission set out a new approach to the development and promotion of Canadian artists that is expected to be implemented on 1 September 2007. In order to reflect a new emphasis on development initiatives that lead to the creation of audio content for broadcast using Canadian resources, the Commission will replace the expression "Canadian talent development" (CTD) with "Canadian content development"(CCD). Each radio station holding a commercial radio licence will be required to make a basic annual CCD contribution based on its revenues in the previous broadcast year.
20. The Commission notes that this applicant has made commitments for CTD that will be imposed as a **condition of licence**. Amounts required under this condition of licence may be deducted from the amounts that will be required under the new basic CCD contribution.
21. The Commission reminds the applicant that any development initiatives that have not been allocated to specific parties by condition of licence should be allocated to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists. Parties and initiatives eligible for CCD funding are identified in paragraph 108 of Public Notice 2006-158.

Employment equity

22. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages Bayshore to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

Issuance of licence

23. The Department has advised the Commission that, while this application is conditionally technically acceptable, it will only issue a broadcasting certificate when it has determined that the proposed technical parameters will not create any unacceptable interference with aeronautical NAV/COM services.
24. The Commission reminds the applicant that, pursuant to section 22(1) of the *Broadcasting Act*, no licence may be issued until the Department notifies the Commission that its technical requirements have been met, and that a broadcasting certificate will be issued.
25. Furthermore, the licence for this undertaking will be issued once the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 24 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 20 February 2009. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before this date.

Secretary General

This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>

Appendix to Broadcasting Decision CRTC 2007-69

Conditions of licence

1. The licence will be subject to the conditions set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999, with the exception of condition number 5.
2. The licensee shall, as an exception to the percentage of Canadian musical selections set out in section 2.2(8) of the *Radio Regulations, 1986*, in any broadcast week, devote, in that broadcast week, a minimum of 40% of its musical selections from content category 2 (Popular music) to Canadian selections broadcast in their entirety.
3. In each broadcast week, the licensee shall devote not less than 15% of its weekly musical selections to category 3 (Special interest music) selections.
4. Upon commencement of operation, the licensee shall make direct annual expenditures of at least \$6,500 in each broadcast year on the development and promotion of Canadian talent. In each broadcast year, this amount shall be distributed as follows:
 - \$400 to the Foundation to Assist Canadian Talent on Records (FACTOR);
 - \$2,500 to the Goderich Bluesfest for the purpose of funding artist fees and assistance;
 - \$2,100 to a discretionary fund to foster the development of local talent in Goderich and surrounding areas. In the event that the total amount of this contribution were not expended by the end of the fiscal year, the remaining amount shall be allocated to FACTOR; and
 - \$1,500 to FACTOR earmarked for the Huron County area.

For the purposes of these conditions, the terms “broadcast week,” “Canadian selection,” “content category,” and “musical selection” shall have the same meaning as that set out in the *Radio Regulations, 1986*.